

ALF/RCF REGULATION ISSUES MEETING
AGENDA
NOVEMBER 16, 2010

I. Health Card Issue—All Licensure Types

The TB tests are enforced on a 365 day rule. The problem is that to stay in compliance, the employee must continue getting the test earlier each year. This poses a management problem for the facility. This would be much more workable if the test were required to be completed in the same month each year. We had discussed this before but operators tell us they have been tagged for employees in the month their health card expired.

The Office of Long Term Care has revised the definition of “annual” in the Assisted Living Regulations; please see below. OLTC will use the definition below when surveying Residential Care Facilities for compliance with the requirements for TB skin tests. Additionally, the definition below will also be used in determining compliance with NFPA requirements for RCFs.

Annual- A twelve month period preceding the last required action. Unless a date certain is specified in the law for regulation requiring the action (e.g. the International Building Code – IBC) the action may be taken any time during the month in which it is due. Actions which are required to be taken every five years may be taken any time during the month in which they are due.

II. I & A Reports--All Licensure Types

I&A Reports are too large, do not collect the right information, do not readily allow accident reporting and collect redundant information. More specificity in what requires reporting would help. RCFs should use the same form as ALFs.

*The Office of Long Term Care agrees. A draft revision of the I&A forms for nursing homes is available in the Draft Documents folder located at:
<https://ardhs.sharepoint.net/OLTC/default.aspx>*

The Office of Long Term Care invites a review and comments of the draft.

III. Trash cans--All Licensure Types

Operators tell us that surveyors are requiring one wastepaper basket/trash container per resident which does not appear in the regs. Also, UL listed cans are significantly more expensive. Now, most facilities do not allow smoking in the facility, there is no need for fire-proof trash receptacles.

While OLTC agrees that most facilities attempt to prohibit smoking in the facility, OLTC has found evidence of residents smoking in their rooms and in the facility on numerous occasions. Because of this, while it is correct that the regulations do not require facilities to have wastebaskets or trash containers in residents' rooms; the Office of Long Term Care intends to amend the regulations to require that facilities provide a UL

approved wastebasket for each resident room . International Building Code Section 2903.1 concerning the use of combustible receptacles for ashes, waste, rubbish or sweepings shall not be placed in wood or other combustible receptacles and shall be removed daily from the structure. Any trash containers or wastebaskets in the residents' rooms must comply with IBC requirements.

IV. Food Labeling--All Licensure Types

Food labeling and recipes in process were discussed some time ago. We never received notification that we could expect and convey conditions which we believed were agreed. OLTC wants evidence of a food product in preparation to excuse the food labeling requirement. Such evidence would be a menu showing the end product food being prepared or recipes open where the food in question would be a component. Also, several operators have reported that surveyors have told them to label foods that have expiration dates with the date opened. We see no value in that requirement and it is not in the regulations.

*We have found that facilities have food that is not labeled or dated and have stated that the food is going to be served at the next meal. We then review the menu and the item is not on the menu. The facility says, "That is because the menu is going to change and we're not having; we're have this instead." even though the menu has not been changed to reflect the new food item. This means that the first item remains unused **yet unlabeled and undated**. Therefore, the Office of Long Term Care will survey to the following guidelines:*

Food that is not labeled or dated and found in the facility shall not constitute a deficiency if the facility can provide a menu for the date in question with the food item being a component of that days menu. A food item not listed on the menu for the date in questions shall meet regulatory requirements.

Containers of food with the manufacturing expirations date shall suffice and the facility will not to label the food as to when it was opened. However the exception is: Some facilities freeze items such as milk, butter, cheese, etc. When these frozen items have been defrosted the expiration date on the original packaging may be expired. In the instance the facility shall date the container as to when it was defrosted. Dating the thawed container of food will ensure food safety.

V. Medication Labeling--All Licensure Types

Some operators have said they have had problems with small, single or limited use OTC meds that have packaging too small to be easily or legibly labeled. We think these should be considered "labeled" with the resident's name if they are in the medicine cabinet box with that resident's name on the box.

The Office of Long Term Care cannot respond with the information provided.

VI. Surge protectors--All Licensure Types

There still seems to be some problems with this issue. . Some say "Surge Arrestor" and not "Surge Protector" or "Surge Suppressor." If the unit has the primary protected at 330 volts and has the UL listing, the break voltage on the neutral and ground lines should not matter since they are not required to break to get the UL rating. No one we have spoken with has ever heard of a fire caused by a surge protector.

Although we have recently had more clarification on the SPs, there are still problems. Most of the office/industrial supply stores either do not stock what we need or cannot get them. If you buy online, you may not get the product you ordered. If the term is arbitrary and not part of the UL listing, we suggest that any language indicating surge protection be allowed. Our interpretation of Maynard's email was that neutral or ground protection had to be 330V. Our understanding of the devices is that many do not protect any line except negative and that is all that is required to meet the UL requirement. Due to the expense and difficulty acquiring acceptable devices we would like more time to get facilities in compliance on this requirement.

The Office of Long Term Care agrees that the name or term should not determine whether the equipment is permissible (i.e., surge protector, surge arrestor or surge suppressor). Rather, the issue is whether the equipment meets UL and IBC/NFPA requirements. The device should indicate the protection rating at 330V. The name surge protector, surge arrestor or surge suppressor shall be listed on the device or cord of the device. If you go to a Wal-Mart, Best Buy or other stores that sell computers and the computer products you will find the surge protectors that meet this requirement. You may not find the proper surge protector in the hardware section.

VII. Medication Orders—ALF II

Facilities should not be required to get doctor's orders to allow a person with medication administration needs to leave the facility for visits.

The Office of Long Term Care agrees, and will amend the regulations to require only that facilities document when medications are released to a responsible party with whom a resident will be visiting out of the facility. Prior to amending the regulations, the Office of Long Term Care agrees that the requirements will be met if the facility documents for each instance in which a resident's medications are released to a responsible party for which the resident will be visiting out of the facility;

- 1. The name of the resident;*
- 2. The name, amount, and per unit size of the medication provided to the responsible party or the resident;*
- 3. The name of the person to whom the medication is released and with whom the resident will be visiting outside the facility;*
- 4. The relationship to the resident of the person identified in number 3;*
- 5. The signature of the person identified in number 3.*

VIII. Dietary Manager—ALF I

The regulations say that each assisted living facility shall make available a dietary manager. The cost of this regulation could be reduced for some organizations if one

dietary manager could serve more than one facility especially if they are all part of the same organization.

ALF I Section 700.3.23 states:

Each assisted living facility shall make available a dietary manager, who is certified as required by law or regulation, to prepare nutritionally balanced meal plans in consultation with staff and resident or their responsible parties.

The regulation states “shall make available”. The regulation does not require that each facility have a dietary manager working on the premises at all times.

IX. Electric Potpourri/candle Warmers—ALF

It is our understanding that surveyors are not allowing electric potpourri or electric candle warmers. These devices have no flame and we are not aware of a particular fire hazard associated with them. We would like these allowed.

Response

Electric Potpourri/candle warmers are not prohibited in the ALF regulations. However, should the resident request to use one of the devices it should be Underwriters’ Laboratory Listed and in good repair. Assisted Living Regulations state in section 903(m)(3):

Practices that create an increased risk of fire are prohibited. This includes, but is not limited to the use of candles, oil lamps, incense or open-flamed items.

X. LAUNDRY:

Do ALF regulations allow facilities to charge a fee for laundering personal items and does personal items include linens; i.e., sheets, towels etc.? A surveyor told a facility owner that they had to provide laundry service as part of their core service and could not charge a fee. The facility does not provide linens to their residents; the residents provide their own linens.

Section 700.2.3 (g) states:

The facility shall be responsible, as part of the services required under the basic charge, for providing laundry services on all linens and supplies owned by the facility.

Section 700.2.3 States:

For those residents who do not wish to launder their own personal items, the facility shall include this service as part of the service package. The facility may provide this service for free, or for an additional fee basis, and indicate as such in the occupancy admission agreement.

Accordingly, the facility is allowed to charge a fee for laundering personal items, when the term personal items refers to items owned by the resident and not by the facility.

Please note that resident are not required to provide their own linens. Section 903 (j) states:

Residents may provide their own linens, but may not be required by the facility to do so. The facility must include in the resident's direct care service plan portion of the occupancy admission agreement whether the resident or his or her responsible party prefers the facility to provide linens or the resident or his or her responsible party will provide his or her own linens, and whether the facility will launder the linens or the resident or his or her responsible party will laundry his or her own linens. Linens may be provided by the facility for no cost or may be provided at an extra charge. If the resident or his or her responsible party chooses to utilize facility linens, the following minimum amounts of linen must be available in the facility at all times:

- 1. Sheets – three (3) sets for each resident;*
- 2. Pillowcases – three (3) sets for each resident;*
- 3. Bath towel – three (3) for each resident;*
- 4. Hand towels – three (3) for each resident;*
- 5. Washcloths –three (3) for each resident;*
- 6. Blankets – one (1) for each resident;*
- 7. Pillows – one (1) per resident.*

If the resident or his or her responsible party wishes to use his or her own personal linens the facility will counsel the resident or his or her responsible party on recommended quantities to maintain. In the case where a resident or his or her responsible party uses personal linens, the facility is not required to provide or keep available any linens for the resident unless the resident does not have sufficient numbers of personal linens available to maintain clean and sanitary conditions. If this is the case, the facility shall provide additional linens up to the quantities specified above. In both cases, clean linens may be stored in the resident's apartment.

The facility shall provide linens to the resident if the resident does not provide their own linen. If the facility provides the linen then the facility is responsible to wash the linen with no charge to the resident. If the resident chooses to have the facility wash their personal items the facility may charge the resident to do so.

XI. REPORTING LOST NARCOTICS: Are ALF administrators required to notify OLTC

in the event of a lost narcotic that is not recoverable? An administrator filled out the incident form to send in but did not submit the form as she was told that unless the event resulted in injury or involved the police, it was not necessary. The administrator was told “the office was swamped with faxes and really only wanted to see the serious ones”.

It is unclear what is meant by the term “a lost narcotic that is not recoverable.” In the event that the loss of the narcotic is the result of witnessed, suspected, or alleged misappropriation, then the event must be reported to the Office of Long Term Care as per Section 507 of the regulations.

Additionally, Section 703.2.13 states:

Reporting Misappropriation of controlled Substances. Reporting misappropriation of controlled substances shall be in accordance with the Arkansas Department of Health Pharmacy Services Branch rules and regulations.

The Arkansas Department of Health Pharmacy Services Branch rules and regulations may be downloaded from:

http://www.healthy.arkansas.gov/aboutADH/Rules_Regs/ControlledSubstances.pdf

XII. CONTRACT EMPLOYEES: To what extent should facility management develop a file on a contract employee? For example, is a contracted beautician required to have training on medication? Does the six hours of training per year are required of contract employees need to be selective to the training that is relative to their work? (resident rights, fire drills, fall prevention, etc.)

Section 504.4 lists the required training/orientation for all employees, including contract employees. Those training areas are mandatory. Section 504.4.1 states:

All staff and contracted providers having direct contact with residents and all food service personnel shall receive a minimum of six (6) hours per year of ongoing education and training to include in-service and on-the-job training designed to reinforce the training set forth in Section 504.4(a)(b)(c).

Accordingly, so long as the contract employee provides services to residents, the contract employee must undergo in-services trainings that cover or reinforce all the mandatory training areas under Section 504.4.

XIII. BACKGROUND CHECKS: Are facility RN’s, LPN’s, and nurses as well as those contracted through Home Health, Hospice, etc. required to have Federal Background Checks, ECR’s, and ARR’s? According to tag #502 in the CRC regulations, RN’s and LPN’s are exempt from CRC’s. In a recent survey, a surveyor told the facility that all of the above were required to have the background checks listed above.

Licensed personnel, with the exception of administrators, are exempt from the Arkansas Criminal Background Check law. This means that licensed personnel, with the exception of administrators, do not have to undergo a federal criminal background check.

Licensed personnel must undergo an Employment Clearance Registry Check and a check of the Adult Maltreatment Registry. Those checks address areas not covered by the criminal background check, such as misappropriation of resident property or abuse or neglect of residents or the elderly, which may invalidate or bar a person from employment in a long-term care facility. See Section 504.1.1(e).

XIV. IN-SERVICE TRAINING: Are employees of the Home Health, Hospice, and other agencies required to have the same 7, 30, and 180 day in-services that are providing in-service training to agency individuals? AL II Regulation # 504 states that “All staff and contracted providers having direct contact with residents as well as all food service personnel shall receive orientation and training on the following topics within the time frames specified herein, provided however, that representative of the resident are exempt from this requirement”

Yes, provided the employees of the Home Health agency, the Hospice, or other agencies are under contract to the facility. As noted in the response to Question XII:

Section 504.4 lists the required training/orientation for all employees, including contract employees. Those training areas are mandatory. Section 504.4.1 states:

All staff and contracted providers having direct contact with residents and all food service personnel shall receive a minimum of six (6) hours per year of ongoing education and training to include in-service and on-the-job training designed to reinforce the training set forth in Section 504.4(a)(b)(c).

Accordingly, so long as the contract employee provides services to the residents, the contract employee must undergo in-service trainings that cover or reinforce all of the mandatory training areas under Section 504.4. There could be instances in which the resident, resident's family, or other representatives of the resident contract for the services provided through other agencies. In those cases, the employees of those other agencies are not contract employees of the facility, and the requirement does not apply.

XV. WHEELCHAIR BELTS: Can ALFs use the wheelchair belts and the wheelchair poly-vests to help a resident improve posture in a wheelchair and prevent their leaning heavily to one direction or another with the possibility of tipping a wheelchair with their weight? For example, and overweight resident who has had a stroke and leans to one side in a chair.

Yes, provided that the device does not constitute an impermissible restraint. However, the use of such devices will always raise the issue whether the individual is appropriately placed, or requires a higher level of care such as a nursing facility.

XVI. RX TAKE BACK: On September 25th, there was a state wide RX Take Back Day. Would this type of venue be appropriate for AL facilities to participate in as long as the documentation of the disposition of drugs met the regulatory requirements? This event provided for the destruction of drugs in a safe, legal and environmentally friendly manner.

Yes.

XVII. CRIMINAL RECORD CHECKS: Should potential employees or providers pay for Criminal Record Checks? Some providers have reported hearing that it is against EEOC Rules to charge the potential employee.

There is no Arkansas law or regulation that mandates who must pay for a criminal record check. Therefore, under Arkansas law and regulations, the criminal background check may be paid by the applicant, employee, or facility. The Office of Long Term Care cannot address whether having an applicant or employee pay the fee for a criminal background check violates any federal law or regulation, or would trigger an action under the EEOC. Facilities should consult their attorneys on this issue.

XVIII. MEDICATION ADMINISTRATION: Are specialty care units that are licensed as ALF Level I permitted to use a nurse to administer medication and perform other limited skilled nursing procedures since their residents (due to dementia) are not cognitively able (but may be physically able to take their won medications)? Or do the residents have to be functional enough to be able to demonstrate to the resident what to do and they follow?

There are actually several issues here, which will need to be addressed.

An ALF Level I may administer medication so long as that is done in conformity with the Nurse Practices Act and the regulations of the Arkansas State Board of Nursing (ASBN). See, e.g., Sections 701 and 702.1.1.2.

A licensed nurse in good standing employed or utilized by the ALF may provide nursing services within the scope of the nurse's licensure status.

*Concurrent with number 2, the scope of nursing services received by the resident cannot exceed the level of care for which the facility is licensed. If the level of nursing services performed by the nurse is at a level that would be required by a resident of an ALF Level II, the nurse may not provide those services regardless of the nurse's license-the facility may not provide services to, accept for residence, or continue to allow residence or provide services to, any individual that exceeds the level of care for the ALF. **Nursing services beyond passing/administration of medication would be a level of care or services that exceeds the level of care or services for which an ALF Level I is licensed to provide.***

An ASCU is a part of an ALF; not vice versa. The ASCU, unless otherwise specified in the ASCU section of the ALF regulations, must conform to the regulations for ALFs-and by extension, may engage in the same service or manner of delivery as the “parent” ALF.

*Therefore, to the extent that the needs of the resident, and the level of nursing services provided to the resident, do not exceed the level of care authorized by an ALF Level I, the ALF’s ASCU may utilize the nurse to administer medication and provide nursing services to the resident of the ASCU. **Nursing services beyond passing/administration of medication would be a level of care or services that exceeds the level of care or services for which an ALF Level I is licensed to provide.***

XIX. NURSING – SPECIALTY CARE UNIT: If an ASCU does not have a licensed nurse on duty during the night, are other direct care staff permitted to assist with the medications that may be needed PRN – since the resident is not “cognitively able” in most cases?

No. PRN medications require that the person who decides that the medication should be administered make a medical determination regarding the recipient’s condition. While non-licensed staff can perform an action that is used to make a medical determination, that staff cannot make the medical determination. As an example, a CNA can measure a resident’s blood pressure. A CNA cannot use the results to determine whether the resident’s blood pressure is elevated to the point that a PRN medication to treat high blood pressure is needed.

The Office of Long Term Care would be willing to reconsider if the Arkansas State Board of Nursing were to issue and interpretation on this matter.

XX. TRAINING: Regulations require that every employee complete 30 hours of training with a minimum of 8 hours per month within their first 5 months of employment. Regulation 805.c states that the trainer shall have:

1. Minimum of one year uninterrupted employment in the care of Alzheimer’s residents, or
2. Shall have training in the case of individuals with Alzheimer’s disease and other dementia, or
3. Is designated by the Alzheimer’s Association or its local chapter as being qualified to meet training requirements.

Does the “or” after 1, 2, & 3 mean anyone of the requirements may be met or all of the requirements? Does this exclude using “Arkansas Alzheimer” which is different from the Alzheimer’s Association? Are video training tools permitted that are developed by experts in the field through the local Area on Aging? Can a trainer in a facility become certified by a recognized body to conduct such training?

To answer the questions in the order asked:

1. *The use of the word “or” means that the person providing the training must meet*

- any of the three criteria – they do not have to meet all three.*
- 2. The term “designated by the Alzheimer’s Association or its local chapter” refers to the national Alzheimer’s Association and its affiliate chapters. In Arkansas, those are the Central Arkansas Regional Center in Little Rock, the Northwest Arkansas Regional Center in Bentonville, and the Western Arkansas Regional Office in Fort Smith. The Office of Long Term Care will, pending amendment of the regulations, accept an individual designated by Arkansas Alzheimer’s.*
 - 3. There is not restriction on the means of training; trainers may use video training tools. However, those tools must be used by a trainer meeting the requirements under Section 805 – the facility cannot simply have staff view a video and meet the training requirements.*
 - 4. There is no certification per se. However, if a facility has on staff an individual who has a minimum of one (1) year of uninterrupted employment in the care of Alzheimer’s patients or has training for individuals with Alzheimer’s disease and other dementia, that person would qualify under the regulations to act as a trainer.*